

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Environmental Dynamics,
Inc.
14531 South Avalon Blvd.
Gardena, CA 90248

ID No: CAD 982 513
699

and

Miguel Hernandez

Respondents.

Docket HWCA 20030329

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control
(Department) and Environmental Dynamics, Inc., a California
corporation, and Miguel Hernandez, an individual,
(collectively, Respondents) enter into this Consent Order and
agree as follows:

1. Facility.

1.1 Respondents operate a business as a transporter
of hazardous waste at 14531 South Avalon Boulevard, Gardena,
California (Site).

1.2. Respondent Environmental Dynamics, Inc., is registered with the Department of Toxic Substances Control as a transporter of hazardous waste, with registration number 2597.

2. The Department inspected the Site on May 29 and May 30, 2003.

3. Violations. The Department alleges the following violations:

3.1. As a transporter of hazardous waste, the Respondents violated Health and Safety Code section 25201, subd. (a), in that on 158 separate occasions between January 2002 and December 2002, Respondents stored hazardous waste in excess of the 10 days allowed under the transfer facility exemption (California Code of Regulations, title 22, section 66263.18) and such storage was without a permit or other grant of authorization from the Department. As a result of these violations, Respondents illegally stored hazardous waste for at least 277 days during 2002.

4. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

5. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the

Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

6. Respondents waive any right to a hearing in this matter.

7. This Consent Order shall constitute full settlement of the violations alleged above, except as noted in Paragraphs 10 and 10.1 below, but does not limit the Department from taking appropriate enforcement action concerning other violations. Furthermore, this Consent Order shall not prevent the Department from introducing, in any later enforcement action or other proceeding, evidence of facts supporting the existence of the violations alleged above.

8. Admissions. Respondents do not admit the violations alleged above, except as follows: Respondents admit the facts alleged above for the purposes of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq., within 5 years of the date of this Consent Order.

SCHEDULE FOR COMPLIANCE

9. Respondents have demonstrated that the violations stated in Section 3.1 have been corrected. No further corrective action or submittal is required.

PAYMENTS

10. The assessed penalty for the violations noted in 3.1 above is \$112,350. However, \$98,350 of the assessed penalty of \$112,350 will be waived by the Department if:

- a. Respondents pay \$14,000 within 45 days of the execution of this Consent Order; and
- b. For a period of 5 years following the execution of this Consent Order:
 - i. Respondents agrees to toll the applicable statute of limitations on the violations alleged in paragraph 3.1;
 - ii. Respondents remain free of all Class I violations, as that term is defined in Health & Safety Code section 25110.8.5; and
 - iii. Respondents do not store hazardous waste for periods in excess of the 10 days allowed under the transfer facility exemption (California Code of Regulations, title 22, section 66263.18), unless Respondents apply for and obtain a permit

from the Department as a hazardous waste storage facility.

10.1 If any of the conditions of paragraph 10 above are not met, the full penalty of \$112,350 (less the \$14,000 already paid, if paid) will come due within 30 days of:

- a. the issuance of a letter from a DTSC Branch or Division Chief demanding payment in accord with the terms of this Consent Order pursuant to a violation of the condition specified in sub-graph 10.a. above; or
- b. the issuance of an Administrative Enforcement Order or Draft Administrative Enforcement Order, if within 5 years of the execution of this Consent Order, citing Respondents for:
 - i. a Class I violation or violations, as that term is defined in Health & Safety Code section 25110.8.5; or
 - ii. storing hazardous waste for periods in excess of the 10 days allowed under the transfer facility exemption (California Code of Regulations, title 22, section 66263.18), unless Respondents have applied for and obtained a permit from the

Department as a hazardous waste storage facility.

10.2 All checks shall be delivered, together with a copy of the attached Payment Voucher, to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

Photocopies of each check shall be sent to:

Florence Gharibian, Branch Chief
Statewide Compliance Division
Department of Toxic Substance Control
1011 N. Grandview Avenue
Glendale, CA 91201

and

Mr. Larry McDaniel, Esq.
Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, CA 91201-22205

OTHER PROVISIONS

11.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

11.2. Penalties for Noncompliance: In addition to the specified consequences as set forth in paragraphs 10 and

10.1 above, failure to comply with the terms of this Consent Order may subject Respondents to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

11.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondents and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

11.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

11.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

11.6. Compliance with Waste Discharge Requirements: Respondents shall comply with all applicable waste discharge

requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board.

12. Final Administrative Order Imposing Penalties.

This Consent Order shall constitute a final administrative order imposing penalties as noted in this Consent Order. Respondents waive their right to judicial review of the penalty determination in this final administrative order. The Department may apply, pursuant to Health and Safety Code section 25184.1, to the appropriate Superior Court for a judgment to collect any currently due portion of the administrative penalty set forth in this Consent Order, and Respondents stipulate to entry of such judgment. The Department may take appropriate action to record judgment lien(s) against Respondents for the amount of the judgment.

Dated: 09/30/2004

Original Signed by Miguel Hernandez
Miguel Hernandez, President,
Environmental Dynamics, Inc..

Dated: 10/07/2004

Original Signed by Florence Gharibian
Florence Gharibian, Branch Chief
Statewide Compliance Division
Department of Toxic Substances
Control